In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-594

ROBERT GORDON MATHER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Following a nonjury trial in the United States District Court for the Southern District of Florida, petitioner was convicted of possessing 197.75 grams of cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1). The court of appeals affirmed (Pet. App. 1-7).

Petitioner, a hijacking suspect, was found in possession of the cocaine when attempting to reboard in

Miami the continuation of a flight from South America to Atlanta, Georgia. He argues here that it was impermissible for the trier of fact to infer intent to distribute cocaine from the large amount of the substance found on his person, because Congress has created no such inference in the statute. The absence of a statutory inference, however, does not bar a fact-finder, here the district judge, from drawing an inference reasonably suggested by the particular facts and circumstances. See *Rugendorf* v. *United States*, 376 U.S. 528, 536-537; *Turner* v. *United States*, 396 U.S. 398, 418 n. 35. We rely upon the assessment of the record by the court below in urging that the inference drawn here was a permissible one.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1972.

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